

EXHIBIT C

1 THE HONORABLE RONALD B. LEIGHTON
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 SU SHIN, CASE No. C08-05626-RBL
12 Plaintiff,
13 v.
14 ESURANCE INSURANCE COMPANY, a
15 Wisconsin corporation; ESURANCE
16 PROPERTY AND CASUALTY
17 INSURANCE COMPANY, a California
18 corporation; ESURANCE INC., a
Delaware corporation; and ESURANCE
INSURANCE SERVICES, INC., a
Delaware corporation,
Defendants.

ORDER OF PRELIMINARY
APPROVAL OF SETTLEMENT AND
APPROVAL OF NOTICE OF
PENDENCY OF SETTLEMENT OF
CLASS ACTION TO CLASS MEMBERS

19 ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT AND
20 APPROVAL OF NOTICE OF PENDENCY OF SETTLEMENT
OF CLASS ACTION TO CLASS MEMBERS

21 WHEREAS the Parties have made a motion for preliminary approval of a Settlement
22 Agreement between a Settlement Class and Esurance Insurance Company and Esurance
23 Insurance Services, Inc. (collectively "Esurance," as defined in the Settlement Agreement¹).

24 NOW, THEREFORE, based upon the preliminary settlement hearing held on
25 10/2/09 and all the files, records and proceedings herein, and it appearing to the Court that a

26
¹ Capitalized terms used herein shall have the meanings ascribed to them in the Settlement Agreement.
ORDER OF PRELIMINARY APPROVAL OF DLA Piper LLP (US)
SETTLEMENT AND APPROVAL OF NOTICE OF 701 Fifth Avenue, Suite 7000
PENDENCY OF SETTLEMENT OF CLASS Seattle, WA 98104-7044 • Tel: 206.839.4800
ACTION TO CLASS MEMBERS C08-05626-RBL - 1

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1 hearing should be held (on notice to the Potential Class Members) to determine finally if the
2 terms of the Settlement are fair, reasonable and adequate;

3 **IT IS HEREBY ORDERED THAT:**

4 1. For purposes of determining whether the terms of the Settlement should be
5 finally approved as fair, reasonable and adequate, and contingent upon the
6 Settlement being finally approved, a Settlement Class is conditionally certified,
7 for purposes of this Settlement only, as consisting of a class defined as follows:

8 Every Person who, during the period from October 15, 2002, to the date of this
9 Order, meets the following criteria:

10 (a) was insured under a personal lines automobile insurance policy
11 providing uninsured motorist property damage coverage or underinsured
motorist property damage coverage issued by Esurance;

12 (b) was involved in an accident with an underinsured, uninsured, or hit
13 and run motorist and reported this type of claim between October 15,
2002 and the date of this Order;

14 (c) for whom the sum of claim payments made by Esurance under any
15 property damage coverage for vehicle repairs exceeded \$1000;

16 (d) whose vehicle was less than 6 years old at the time of loss;

17 (e) whose vehicle had less than 90,000 miles at the time of loss; and

18 (f) whose vehicle suffered structural (frame) damage and/or required
19 body work.

20 (g) Notwithstanding the criteria set forth in sub-sections (a)-(f) above,
21 the following are excluded from the Settlement Class:

22 (i) claims resulting in total losses;

23 (ii) claims for damage to leased, non-owned or temporary
24 substitute vehicles;

25 (iii) claims limited to (1) glass repair or replacement; (2) tire
26 replacement, or (3) sound systems repair or replacement, or (4)
any combination of (1) (2) and (3) only;

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1 (iv) claims identified as closed without payment by Esurance;
2 (v) claims in which the policyholder was paid for diminished
3 value in addition to the cost of repair;
4 (vi) claims involving vehicles that, prior to the accident at issue,
5 had been involved in any other accident;
6 (vii) the Esurance Entities (as defined in the Settlement
7 Agreement), all present or former officers and/or directors of the
8 Esurance Entities, Class Counsel, the Judge of this Court, the
9 Judge's family and staff, Esurance's counsel of record, and all
Persons who make a timely and valid election to be excluded
from the Settlement Class in accordance with the provisions of
the Individual Notice.

10 2. Plaintiff is appointed as a representative of the Settlement Class and the
11 following counsel are designated as counsel for the Settlement Class ("Class
12 Counsel"):

14 Debra B. Hayes
15 REICH & BINSTOCK
16 4265 San Felipe, Suite 1000
Houston, TX 77027

17 David A. Futscher
18 PARRY DEERING FUTSCHER & SPARKS
19 P.O. Box 2618
Covington, KY 41012-2618

20 Elaine A. Ryan
21 Patricia N. Syverson
22 Van Bunch
23 BONNETT FAIRBOURN FRIEDMAN & BALINT
2901 N. Central Avenue, Suite 1000
Phoenix, AZ 85012

24 Stephen M. Hansen
25 LOWENBERG, LOPEZ & HANSEN, PS
26 950 Pacific Avenue, Suite 450
Tacoma, WA 98402

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2 3. If final approval of the Settlement is not obtained, or if final judgment as
3 contemplated herein is not granted, this Order, including the certification of the
4 Settlement Class, shall be vacated ab initio and the parties shall be restored
5 without prejudice to their respective litigation positions prior to the date of this
6 Order.

7 4. Pending final determination of whether the Settlement should be approved, all
8 proceedings in this Action shall be stayed until further order of the Court, except
9 such proceedings as may be necessary either to implement the Settlement or to
10 comply with or effectuate the terms of the Settlement Agreement.

11 5. Esurance shall, as soon as practicable, but to be completed no later than thirty
12 (30) days after the date of this Order, send to the last known address of each
13 person Esurance has determined to be a Potential Class Member in this case a
14 notice in a form and content substantially similar to the Individual Notice
15 attached as Exhibit B of the Settlement Agreement. The last known address
16 shall be determined from information available in Esurance's files.

17 6. The Individual Notice will provide Potential Class Members with the
18 opportunity to request exclusion from participating in the Settlement. Such opt-
19 out rights may be exercised only individually by a Potential Class Member or, in
20 the case of a Potential Class Member who is deceased or incapacitated only, the
21 Legally Authorized Representative of the Potential Class Member. No Potential
22 Class Member may effect an exclusion of a class of individuals or represent
23 such a class.

24 7. The Court preliminarily finds that the dissemination of the Individual Notice
25 under the terms and in the format provided for in this Order constitutes the best
26 notice practicable under the circumstances, and is due and sufficient notice for

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1 all purposes to all persons entitled to such notice, and fully satisfies the
2 requirements of due process, the Federal Rules of Civil Procedure and all other
3 applicable laws.

4 8. A hearing (the "Final Settlement Hearing") shall be held on 1/15/10 1:30 in
5 Courtroom B of the United States District Court for the Western District of
6 Washington in Tacoma, Washington to determine whether the Settlement
7 (including the payment of attorneys' fees and costs to Class Counsel) should be
8 approved as fair, reasonable, and adequate, and to determine whether final
9 judgment approving the Settlement and dismissing all claims asserted in this
10 Action on the merits, with prejudice and without leave to amend, should be
11 entered. The Final Settlement Hearing may be postponed, adjourned or
12 rescheduled by order of the Court without further notice to the members of the
13 Settlement Class.

14 9. Objections to the Settlement shall be heard, and any papers or briefs submitted
15 in support of said objections shall be considered, by the Court (unless the Court
16 in its discretion shall otherwise direct) only if they comply with the objection
17 procedures set forth in the Settlement Agreement and the Individual Notice.
18 Specifically, members of the Settlement Class who have not filed a timely
19 request for exclusion from the Settlement Class must file a notice of intent to
20 object to the Settlement. The written notice of intent to object must be: (a) filed
21 with the Clerk of the Court not later than sixty (60) days after the Notice Date;
22 and (b) sent by first-class mail, postmarked no later than sixty (60) days after the
23 Notice Date, in the manner provided for in the Individual Notice. Any Potential
24 Class Member who does not so request to object waives the right to do so in the
25 future, and shall be forever barred from making any objection to the Settlement.
26 Any notice of intent to object must contain: (a) a heading which refers to the

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1 Action; (b) the name, address, telephone number and signature of the objecting
2 Class Member; (c) if available, the Esurance policy and/or claim number, and
3 the date of loss for the claim at issue; (d) the name, address, bar number and
4 telephone number of the objecting Class Member's counsel, if represented by an
5 attorney; (e) a statement whether the objecting Class Member intends to appear
6 at the Final Settlement Hearing, either in person or through counsel, and, if
7 through counsel, identifying counsel by name, address and phone number; and
8 (f) if the Class Member or his/her attorney requests permission to speak at the
9 Final Settlement Hearing, a detailed statement of the specific legal and factual
10 bases for each and every objection, and a detailed description of any and all
11 evidence the objecting Class Member may offer at the Final Settlement Hearing,
12 including photocopies of any and all exhibits that the objecting Class Member
13 may introduce at the Final Settlement Hearing.

14 10. All requests for exclusion from the Settlement Class must be in writing and must
15 comply with the provisions of and contain the information required by the
16 Settlement Agreement and the Individual Notice and, to be effective, must be
17 sent to the address provided in the Individual Notice, by first-class mail,
18 postmarked no later than sixty (60) days after the Notice Date. All persons who
19 file valid requests for exclusion in the manner set forth in the Individual Notice
20 shall have no rights under the Settlement and shall not receive any payment
21 pursuant to this Settlement, but shall not be bound by the Settlement Agreement
22 or any final judgment and order of dismissal entered pursuant to the Settlement
23 Agreement. All Potential Class Members who do not request exclusion in the
24 manner set forth in the Individual Notice shall be bound by any final judgment
25 and order of dismissal entered pursuant to the Settlement Agreement, shall be
26 barred and enjoined, now and in the future, from asserting any and all of the

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Released Claims, as defined in the Settlement Agreement, against the Released Persons, as defined in the Settlement Agreement, and any such Class Member shall be conclusively deemed to have released any and all such Released Claims.

11. Within three (3) business days after the deadline fixed for Potential Class Members to request exclusion from the Settlement Class, Class Counsel and counsel for Esurance shall forward to the Settlement Administrator, Epiq Systems, Inc., copies of any requests for exclusion received by Class Counsel and counsel for Esurance.
12. Within five (5) business days of the deadline fixed for Potential Class Members to request exclusion from the Settlement Class, the Settlement Administrator shall prepare a list of all timely and valid requests for exclusion and deliver such list to counsel for all parties.
13. Class Counsel agree that any representation, encouragement, solicitation or other assistance, including, but not limited to, referral to other counsel, of or to any Person seeking exclusion from the Settlement Class or any other Person seeking to litigate with Esurance over any of the Released Claims, or to represent any form of opt-out class from this Settlement, could place Class Counsel in an untenable conflict of interest with the Settlement Class. Accordingly, Class Counsel and their respective firms shall not (only to the extent that it is otherwise not violative of any applicable rules of professional conduct) represent, encourage, solicit or otherwise assist, in any way whatsoever, including, but not limited to referrals to other counsel, any Person in requesting exclusion from the Settlement Class, except that referring such Person to the Individual Notice or suggesting to any such Person the option of obtaining separate counsel, without specifically identifying options for such counsel, shall be permitted. Additionally, Class Counsel and their respective

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1 firms shall not (only to the extent that it is otherwise not violative of any
2 applicable rules of professional conduct) represent, encourage, solicit or
3 otherwise assist, in any way whatsoever, any Person who requests exclusion
4 from the Settlement Class, or who seeks to represent any form of opt-out class
5 from this Settlement, or any other Person, in any subsequent litigation that
6 Person may enter into with Esurance relating to the Released Claims or any
7 related claims, except that suggesting to any such Person the option of obtaining
8 separate counsel, without specifically identifying options for such counsel, shall
9 be permitted.

10 14. The Settlement falls within the range of possible final approval and is hereby
11 preliminarily approved. The Settlement is not to be deemed an admission of
12 liability or fault by Esurance or by any other person, or a finding of the validity
13 of any claims asserted in the litigation or of any wrongdoing or of any violation
14 of law by Esurance. The Settlement is not a concession and shall not be used as
15 an admission of any fault or omission by Esurance or any other person or entity.
16 Neither the terms or provisions of the Settlement Agreement, nor any related
17 document, nor any of the negotiations or proceedings connected with it, shall be
18 offered as evidence or received in evidence in any pending or future civil,
19 criminal, or administrative action or proceeding, to establish any liability or
20 admission by Esurance, except in any proceedings brought to enforce the
21 Settlement Agreement or Settlement and except that Esurance may file this
22 Order in any action that may be brought against it in order to support a defense
23 or counterclaim based on principles of res judicata, collateral estoppel, release,
24 good faith settlement, judgment bar or reduction, or any other theory of claim
25 preclusion or issue preclusion or similar defense or counterclaim.

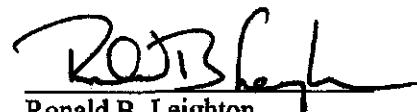
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- 1 15. Upon motion of any party, the Court may, for good cause, extend any of the
- 2 deadlines set forth in this Order without further notice to the Settlement Class.
- 3 16. It is hereby ordered that this Action shall be stayed pending further proceedings
- 4 in connection with the effectuation of the Settlement.

5 IT IS SO ORDERED.

6 DONE IN OPEN COURT this 2nd day of October, 2009.



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8 Ronald B. Leighton
9 United States District Judge
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Presented by:

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ACTION TO CLASS MEMBERS C08-05626-RBL - 9

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